

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Randy L. Scott  
SSN XXX-XX-4329  
Jody L. Scott  
SSN XXX-XX-9079

**CASE NO. 04-33707 GFK**

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. GMAC Mortgage Corporation (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 4, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than September 23, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on June 23, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$44, 000.00, as evidenced by that certain mortgage deed dated October 14, 1998, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated October 14, 1998, executed by Randy L. Scott and Jody L. Scott, husband and wife, recorded on November 3, 1998, as Document No. 338482, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Martin County, Minnesota and is legally described as follows to-wit:

The North Half (N ½) of the following described tract of land: Beginning at the Southwest corner of Outlot Number Three (3) and being on the East line of Grove Street; thence running East 219.18 feet; thence South 133.7 feet; thence West to East line of Grove Street; thence North along the East line of Grove Street to the place of beginning, in the Village of Tenhassen (Ceylon Incorporation).

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 20, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through September, 2004, inclusive, in the amount of \$338.00 each; accruing late charges of \$58.20 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective

reorganization. The value of the property as scheduled by Debtor is \$25,000.00 subject to Secured Creditor's mortgage in excess of \$58,399.52.

The property is also subject to a utility lien in favor of City of Ceylon in excess of \$784.00. The property is also subject to a tax lien in favor of Martin County Treasurer in excess of \$860.00.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 20th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske  
James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

MAR. 5.2004 1:42PM WHITEMAN&amp;WHITEMAN

NO.762 P.5/19

No. 24190 Date 11-3-98Registration Tax hereon of \$ 102.13 PaidRobert J. Hazenberger  
County Auditor/Treasurer

BAS

Tracted

338482 Office of County Recorder

County of Martin, Minnesota

I hereby certify that the within instrument was filed in this  
office for record on the 3rd day of Nov.A.D. 19 98 at 3:30 o'clock P. M. andwas duly recorded as Document No. 338482Kay Wruke

County Recorder

By Mary Perrell DeputyAfter recording return to:  
The Money Store/Packaging  
P.O. Box 160128  
Sacramento, CA 95816-0128

0083436097

NORTH STAR EQUITY

BOX 249 595468

## MORTGAGE

THIS MORTGAGE ("Security Instrument") is made this October 14, 1998  
between the Mortgagor, Randy L. Scott And Jody L. Scott, Husband And Wife,

whose address is 401 East Main Street, Ceylon, MN 56121-0000

(herein "Borrower"), and the Mortgagee, TMS Mortgage Inc.

which is organized and existing under the laws of State of New Jersey

and whose address is 7401 Metro Blvd Suite 310, Edina, MN

55439

(herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of Forty-Four Thousand, Four  
Hundred and 00/100 Dollars (U.S. \$ 44,400.00)together with interest, which indebtedness is evidenced by Borrower's note dated October 14, 1998(the "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner  
paid, due and payable on November 1, 2028TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; extensions,  
modifications and renewals of the Note; the payment of all other sums, with interest thereon, advanced in accordance with this  
Security Instrument to protect the security of this Security Instrument; and the performance of the covenants and agreements  
of Borrower contained in this Mortgage, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, theMINNESOTA MORTGAGE 19810 Original - Record  
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EXHIBIT A

MAR. 5.2004 1:42PM WHITEMAN&amp;WHITEMAN

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following described property located in Martin  
(SEE EXHIBIT 'A' ATTACHED)

County, Minnesota:

being the same property commonly known as: 401 East Main Street, Ceylon, MN 56121-0000  
("Property Address").

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Security Instrument. All of the foregoing, together with such property (or the leasehold estate if this Security Instrument is on a leasehold) are called the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and covenants that Borrower will defend generally the title to the Property against all claims and demands, subject to encumbrances of record. Borrower further warrants, represents and covenants as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness and all other charges evidenced by the Note.

2. **Funds for Taxes and Insurance.** If required by Lender, and subject to applicable law, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; and (e) yearly mortgage insurance premiums, if any. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

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As used in this Paragraph 21, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 21, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

22. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release the Security Instrument. Borrower shall pay any release fees and costs of recordation unless applicable law provides otherwise.

23. **Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

Adjustable Rate Mortgage Loan Rider attached hereto and incorporated herein by this reference.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Randy L. Scott (Seal)  
Randy L. Scott -Borrower  
\_\_\_\_\_  
\_\_\_\_\_-Borrower (Seal)

Jody L. Scott (Seal)  
Jody L. Scott -Borrower  
\_\_\_\_\_  
\_\_\_\_\_-Borrower (Seal)

STATE OF MINNESOTA,

County ss: *Martin*

On this *14<sup>th</sup>* day of *October*, *1998*, before me appeared *Randy L. Scott*  
*Jody L. Scott* Husband & Wife

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that executed the same as free act and deed.

*Kevin P. Danielson*  
Notary Public

My Commission Expires: *1-31-2000*

This instrument was prepared by:

Signature Closing Services  
2059 122nd Avenue N W, Coon Rapids, MN 55448  
(612) 767-7446



MINNESOTA MORTGAGE (8810) Original - Record  
MO02-7MN

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## EXHIBIT "A"

THE NORTH HALF (N 1/2) OF THE FOLLOWING DESCRIBED TRACT OF LAND: BEGINNING AT THE SOUTHWEST CORNER OF OUTLOT NUMBER THREE (3) AND BEING ON THE EAST LINE OF GROVE STREET; THENCE RUNNING EAST 219.18 FEET; THENCE SOUTH 133.7 FEET; THENCE WEST TO EAST LINE OF GROVE STREET; THENCE NORTH ALONG THE EAST LINE OF GROVE STREET TO THE PLACE OF BEGINNING, IN THE VILLAGE OF TENNESSEN (CEYLON INCORPORATION).

*MS 24- 101-32 5 25 02 p24*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Randy L. Scott  
SSN XXX-XX-4329  
Jody L. Scott  
SSN XXX-XX-9079

**CASE NO. 04-33707 GFK**

Debtor.

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 20, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through September, 2004, in the amount of \$338.00 each; accruing late charges of \$58.20 and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrcty. S.D.N.Y., 1986).



II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$25,000.00 subject to Secured Creditor's mortgage in excess of \$58,399.52.

The property is also subject to a utility lien in favor of City of Ceylon in excess of \$784.00. The property is also subject to a tax lien in favor of Martin County Treasurer in excess of \$860.00.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

### **CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 20th day of September, 2004.

### **WILFORD & GESKE**

By /e/ James A. Geske  
James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

CASE NO. 04-33707 GFK

Randy L. Scott  
SSN XXX-XX-4329  
Jody L. Scott  
SSN XXX-XX-9079

**AFFIDAVIT OF  
CINDY STEWART**

Debtor.

Cindy Stewart, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of GMAC Mortgage Corporation.
2. GMAC Mortgage Corporation, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage-deed dated October 14, 1998, executed by Randy L. Scott and Jody L. Scott, Husband And Wife, recorded November 3, 1998, as Document No. 338482. The property is located in Martin County, Minnesota and is legally described as follows, to-wit:

The North Half (N 1/2) of the following described tract of land: Beginning at the Southwest corner of Outlot Number Three (3) and being on the East line of Grove Street; thence running East 219.18 feet; thence South 133.7 feet; thence West to East line of Grove Street; thence North along the East line of Grove Street to the place of beginning, in the Village of Tenhassen (Ceylon Incorporation).

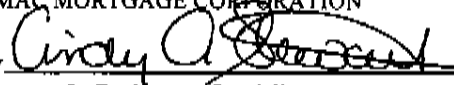
3. That she has reviewed the account records relating to the Scott's mortgage loan, account no. 0620000130.
4. That as of September 8, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$43,597.78
Interest through September 8, 2004	12,752.61
Attorney's Fees:	700.00
Late Charges:	38.80
Escrow Balance:	1,310.33
<b>TOTAL:</b>	<b>\$58,399.52</b>

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of July, 2004 through September, 2004 in the amount of \$338.00 each.
6. This affidavit is given in support of the motion of GMAC Mortgage Corporation for relief from the automatic stay.

GMAC MORTGAGE CORPORATION

By

  
Its Bankruptcy Specialist

Subscribed and sworn to before me  
this 9 day of September, 2004.

  
Notary Public

**NOTARIAL SEAL**  
LORIE A. MARSDEN, Notary Public  
Horsham Twp., Montgomery County  
My Commission Expires Oct. 10, 2005

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Randy L. Scott  
SSN XXX-XX-4329  
Jody L. Scott  
SSN XXX-XX-9079

**CHAPTER 13 CASE**

**CASE NO. 04-33707 GFK**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 20, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Cindy Stewart, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Randy L. Scott  
Jody L. Scott  
RR1 Box 1B  
Ceylon, MN 56121

Ian Traquair Ball  
12 S 6<sup>th</sup> St Ste 326  
Minneapolis, MN 55402

City of Ceylon  
Ceylon, MN 56121

Martin County Treasurer  
PO Box 208  
Fairmount, MN 56031

Michael J. Farrell  
PO Box 519  
Barnesville, MN 56514

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 20th day of Septmeber, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Randy L. Scott  
SSN XXX-XX-4329  
Jody L. Scott  
SSN XXX-XX-9079

**CHAPTER 13 CASE**

**CASE NO. 04-33707 GFK**

Debtor.

**ORDER**

The above entitled matter came on for hearing upon motion of GMAC Mortgage Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 4, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated October 14, 1998, executed by Randy L. Scott and Jody L. Scott, husband and wife, recorded on November 3, 1998, as Document No. 338482 covering real estate located in Martin County, Minnesota, legally described as follows, to-wit:

The North Half (N ½) of the following described tract of land: Beginning at the Southwest corner of Outlot Number Three (3) and being on the East line of Grove Street; thence running East 219.18 feet; thence South 133.7 feet; thence West to East line of Grove Street; thence North along the East line of Grove Street to the place of beginning, in the Village of Tenhassen (Ceylon Incorporation)

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure

4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Bankruptcy Court